FINAL REPORT

APPLICABILITY OF THE TOXIC SUBSTANCES CONTROL ACT TO SHIPYARD OWNERS AND OPERATORS

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MEMORANDUM

March 15, 1993

TO: **FACILITIES AND ENVIRONMENTAL EFFECTS PANEL**
SOCIETY OF NAVAL ARCHITECTS AND MARINE ENGINEERS

FROM: **JOHN L. WITTENBORN**
CAROLYN O. TILLMAN

RE: **APPLICABILITY OF THE TOXIC SUBSTANCES CONTROL ACT TO SHIPYARD OWNERS AND OPERATORS**

I. INTRODUCTION

Pursuant to an agreement with the National Shipbuilding and Research Program ("NSRP"), we have conducted research to determine the applicability of the Toxic Substances Control Act ("TSCA" or "the Act"), 15 U.S.C. § 2601 et seq., to shipyard owners and operators (hereinafter referred to collectively as "shipyard operators"). Concern over the applicability of TSCA has arisen because shipyard operators routinely engage in activities that could be construed as "processing"[1/] under TSCA, such as the mixing for application on commercial or Navy ships of epoxy paints, formaldehyde glues, foam-in-place

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1/ Based on the definition of "manufacturing" under TSCA, we have determined that shipyard owners and operators do not "manufacture" chemical substances. See TSCA Section 3(7), 15 U.S.C. § 2602(7). See also discussion on TSCA Section 5 at pp. 7-11, herein.

resins, etc. In some instances, chemical substances also may be mixed with rubber compounds or sand to create molds used in forming parts for ships. Shipyard operators also may recycle solvents for re-use at the shipyard, thus producing a distilled or blended solvent,

The applicability of TSCA to shipyard operators which handle chemicals or chemical mixtures in the manner described above is important because TSCA imposes numerous recordkeeping and reporting requirements and certain prohibitions or restrictions on persons who use or otherwise handle chemical substances and mixtures. For example, TSCA requires "processors" of chemical substances to: (A) submit data under test rules, in some instances (TSCA Section 4), (B) notify EPA before processing a chemical for a "significant new use" (Section 5), (C) comply with EPA orders that prohibit or restrict the processing of chemical substances for human health or environmental reasons (Section 6), (D) comply with certain recordkeeping and reporting requirements (Section 8) and (E) submit to EPA inspections and enforcement authority (Sections 11 and 15).

Our research [2/] leads us to conclude that the shipyard activities described herein may bring shipyard operators within the reach of TSCA as "processors." This is because the definitions contained within the statute are broad, while the exclusions are limited. Our discussions with EPA officials have confirmed that the Agency also takes a sweeping view of the scope of its authority, even though it has rarely attempted to exercise its full measure. Nonetheless, most of these activities, even if covered by TSCA, would not trigger provisions

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2/ This memorandum addresses only the major regulatory provisions of TSCA and is not intended as a substitute for a careful review of the actual statutory provisions or implementing regulations.

of the statute that necessarily require immediate action on the part of shipyard operators in order to come into compliance with TSCA.

II. DISCUSSION

In general, the various provisions of TSCA apply to the "manufacture", "processing," "distribution," "use" or "disposal" of chemical substances and mixtures. These terms are defined so broadly in the statute that almost any activity involving a chemical substance could, theoretically, be regulated under TSCA. However, the regulations implementing the Act provide some clarification of the intended scope of the statute and, in some instances, EPA has issued "question and answer" documents that further clarify how the statute is to be applied in practice.

Shipyard operators appear to fall within the purview of TSCA as **"processors" because** of the broad statutory definition of "processing." TSCA Section 3(10) **defines "processing"** as:

> the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce --
>
> (A) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance or mixture, or
>
> (B) as part of an article containing the **chemical substance or mixture.**[3/]

The mixing of substances to form paints, coatings, etc. by shipyard operators can be construed as "the preparation of a chemical substance or mixture . . . in a different form or

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3/ 15 U.S.C. § 2602(10) (emphasis added).

physical state from, that in which it was received. . .." In addition, shipyard operators also apply chemical substances and mixtures to ships they build and sell, or repair pursuant to contracts. However, because the definition of processing also includes "distribution in commerce, " whether the activities engaged in by shipyard operators are actually covered by TSCA depends on how the definition of "distribution in commerce" is applied to the various shipyard activities; that is, whether the mere "application" on commercial or Navy ships of chemical substances and mixtures and/or the "sale" of ships containing those same substances and mixtures may be considered "distribution in commerce. "

TSCA Section 3(4) defines "distribution in commerce" as:

> ... to sell, or the sale of, [a] substance, mixture, or article in commerce; to introduce or deliver for introduction into commerce, or the introduction or delivery for introduction into commerce of, [a] substance mixture [sic], or article; or to hold, or the holding of, the substance, mixture or article after its introduction into commerce. 2.

This definition is rather broad and there appears to be no case law defining the term. However, there appears to be some guidance in EPA's recently published background information document on chemical processing under TSCA which sets forth the manner in which EPA has interpreted "distribution in commerce" in the past. See Chemical Processing Under TSCA, Background Information Document (U.S. EPA, August 26, 1992) (hereinafter "Background Document"). Among other things, that document sets forth a letter from BPA in response to a particular inquiry which indicates that the mere application of chemical

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4/ 15 U.S.C. § 2602(4).

substances on an "article"[5/] may constitute processing under TSCA if the article is owned by another or is to be sold to another. Although EPA was addressing a specific inquiry regarding Section 4 of TSCA, EPA defined "processing" for general purposes of TSCA as follows:

> To evaluate whether an activity constitutes processing under TSCA, EPA looks at whether there is "preparation" of a chemical substance or mixture and whether that preparation is "for distribution in commerce." Application of a coating constitutes "preparation" and may constitute distribution in commerce under some circumstances. Both elements must be present to be considered processing. . . .

Background Document at 16. EPA further defined "processing" with the use of examples:

> [T]he spray application of an automotive refinish coating containing a substance subject to a section 4 test rule may constitute processing depending upon the circumstances. EPA has identified three circumstances in which a person would be applying automotive refinish coatings. . . . First, with respect to individuals applying such coatings to their own cars, there is no processing as that term is used in TSCA, because whether or not the individuals are preparing the coating, they are not preparing the cars for distribution in commerce. . . .
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> Second, with respect to a person engaged in the business of applying such a coating in the course of repairing or repainting a car owned by an individual, whether the person is a processor depends on the circumstances of the coating application. A person engaged in the business of applying coatings to cars is distributing such coatings in commerce just as a person who sells coatings without the additional service of applying them would be. The person would be a processor of the substance

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5/ The term "article" is not defined in the general definitions section of the statute. However, if EPA would apply the definition of "article" set forth in the regulations implementing Section 8(a) (discussed herein at pp. 14-15) for general purposes of TSCA, that definition would be broad enough to encompass a "ship."

> in the coating if the person engages in preparing the coating material (for example, adding pigments or solvents, but not stirring the coating or transferring it from its container to the spray equipment) before applying it, because such activities would constitute preparation for distribution in commerce. . . .
>
> Third, with respect to a person engaged in the business of applying such coatings in the course of repairing or repainting cars for resale. . . [s]uch a person would be processing the substances in the coating by preparing the cars for distribution in commerce. The substances in the coating would be prepared for distribution in commerce as part of the repainted car.

Id. at 16-18. [Emphasis added].

Although these examples would appear to cover the preparation and application of coatings to ships, the legal conclusion regarding TSCA application is not completely certain. The EPA guidance document is not law. At most it reflects the opinion of the Agency in response to a specific inquiry. This opinion has not been tested in court and, under different facts, could change. For example, one could argue that coatings applied in connection with the construction and/or repair of Navy ships does not amount to distribution of the coatings in commerce because no further sale or resale of the ships is contemplated. The shipyards, operating under narrowly crafted contract specifications, may arguably be selling a service as paint applicators rather than the coatings and their chemicals. However, it appears likely that EPA would interpret the activities of shipyards described above to be "processing" within the meaning of TSCA.

Despite the foregoing conclusion, each section of concern of TSCA still must be examined to determine whether such activity is actually regulated. This is necessary because

some sections of the statute expressly exempt certain types of processors that nonetheless "distribute in commerce. "

A. TSCA Section 5- Manufacturing and Processing Notices

TSCA Section 5 establishes a premanufacture notice ("PMN") process designed to keep EPA apprised of all of the chemicals produced in the United States. Under Section 5, a person who proposes to manufacture or import a "new chemical substance" or to manufacture or process an existing chemical substance for a "significant new use"[6/] must give EPA notice at least 90 days prior to the manufacture or processing date.[7/] "New chemical substance" is defined as a "chemical substance which is not included on the Inventory."[8/] The Inventory is developed by EPA pursuant to TSCA Section 8(b) and consists of a list of all chemical substances manufactured or processed in the United States. Whether a new use is "significant" must be determined by EPA by rule based on several factors set forth in TSCA Section 5(a)(2). EPA's list of significant new uses is published in 40 C. F. R. Part 721.

1. Manufacture of New Chemical Substances

We have determined that shipyard operators are not required to submit PMN notices for new chemical substances for three reasons: (1) they do not fall within the category of persons listed in 40 C.F.R.0.22 who must report, (2) substances which have no value

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6/ "PMN" is used interchangeably to refer to the notice for the manufacture of a new chemical substance and for the notice for the "significant new use" of a chemical substance or mixture. There are, however, two separate notice requirements.

7/ See TSCA Section 5(a)(1), 15 U.S.C. § 2604(a)(1).

8/ 40 C.F.R. § 720.3(v).

apart from the article containing them are exempt from the PMN requirements, and (3) many of the substances shipyard operators "process" are probably exempt as "mixtures."

First, Section 720.22 indicates that the premanufacture notice requirement for new chemical substances applies to "manufacturers" and "importers". "Processors" are not listed as persons who must report under that Section.

Second, although shipyard operators do "manufacture" chemical substances when they mix ingredients to form epoxy paints, formaldehyde glues, foam-in-place resins and molding compounds, [9/] the fact that these substances have no value apart from the article to which they are attached means that they are not "distributed in commerce" for purposes of the PMN requirements of Section 5.[10/] Section 720.30 of the regulations exempts from the notice requirements:

> (h) The chemical substances described below: (Although they are manufactured for commercial purposes under the Act, they are not manufactured for distribution in commerce as chemical substances per se and have no commercial purpose separate from the substance, mixture, or article of which they are a part.)
>
> (6) Any chemical substance which results from a chemical reaction that occurs upon use of curable plastic or rubber **molding compounds**, inks, drying oils, metal finishing **compounds,** adhesives or **paints**, or any other chemical substance formed during the manufacture of an article destined for the marketplace without further chemical change of the

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9/ Discussions with Robert Allen, Environmental Engineer, U.S. EPA Region V, Environmental Sciences Division, (August 24, 1992), suggest that the mixing of substances to form epoxy paints and other adhesives results in the formation of "new chemical molecules" which means that new chemical substances are formed.

10/ See 40 C.F.R. § 720.30(h)(6). Similarly, molding compounds are exempt from the PMN requirements.

> chemical substance except for those chemical changes that occur as described elsewhere in this paragraph. [11]

Third, the regulations specifically exempt "[a]ny mixture as defined in § 720.3(u)." [12]

Section 720.3(u) defines a "mixture" as:

> any combination of two or more chemical substances if the combination does not occur in nature and is not. in whole or in part. the result of a chemical reaction ; except "mixture" does include (1) any combination which occurs, in whole or in part, as a result of a chemical reaction if the combination could have been manufactured for commercial purposes without a chemical reaction at the time the chemical substances comprising the combination were combined, and if all of the chemical substances comprising the combination are not new chemical substances, and (2) hydrates of a chemical substance or hydrated ions formed by association of a chemical substance with water, so long as the nonhydrated form is itself not a new chemical substance. [13]

To the extent that some of the chemical substances that shipyard operators mix do not result in a "chemical reaction, " but rather a simple "mixture" of substances, such activity would not result in the formation of new chemicals because no "new chemical molecules" would be formed. Rather, mixtures involve the mere "blending" together of chemical substances. Consequently, for such activities as the recycling of solvents, shipyard operators are not subject to the notice requirements for the manufacture of new chemicals. [14]

11/ 40 C.F.R. $ 720.30(h)(6) (emphasis added).

12/ 40 C.F.R. § 720.30(b).

13/ 40 C.F.R. § 720.3(u) (emphasis added).

14/ Discussion with Robert Allen of EPA, June 28, 1992.

Shipyards would not be processors of blended or distilled solvents because they are not distributed in commerce.

2. **Significant New Use of Chemicals**

The requirements governing the significant new use of chemicals listed in Subpart E of Part 721 apply to "processors for commercial purposes."[15/] The regulations at 40 C.F.R. $721.3 define "process for commercial purposes" as:

> the preparation of a chemical substance or mixture containing the chemical substance, after manufacture of the substance, for distribution in commerce with the purpose of obtaining an immediate or eventual commercial advantage for the processor. Processing of any amount of a chemical substance or mixture containing the chemical substance is included in this definition. If a chemical substance or mixture containing impurities is processed for commercial purposes, the impurities are also processed for commercial purposes. (Emphasis added)

Thus, although not subject to the PMN notice requirements for the manufacture of new chemical substances, shipyard operators are potentially subject to the notice requirements for the significant new use of chemicals if the substances they use are listed in Subpart E of Part 721 of the regulations. However, even if the substances used by shipyard operators are listed in Subpart E, the uses to which these substances are put would also have to be considered " significant new uses" in order for shipyard operators to be subject to this Section. The significant new uses of substances are referenced in Subparts E and B of Part 721 and involve such factors as the volume produced, the extent to which the new use

15/ See TSCA Section 5(i), 15 U.S.C. § 2604(i).

changes the exposure of humans or the environment, and the manufacturing, processing, distribution, and disposal methods contemplated. [16/]

B. TSCA Sections 4 and 8- Testing of Chemical Substances and Mixtures and Health and Safety Data Reporting

Under Section 4 of TSCA, if EPA finds that the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture may present an unreasonable risk of injury to health or the environment, but there is insufficient information to determine the specific risks, the Agency may promulgate a rule to require the testing of the substance. [17/] The testing requirements are initiated by EPA pursuant to recommendations made by a committee. A processor can obtain an exemption from this requirement by showing that the chemical or mixture to be processed is equivalent to a chemical or mixture for which data has already been submitted and that the submission of data by the applicant would be duplicative. [18/]

Section 8(d) of TSCA requires processors of substances listed in 40 C.F.R. $ 716.120 to report health and safety studies involving these substances. This Section enables EPA to use the health and safety studies to support its investigations of the risks associated with certain chemicals which, in turn, provide support for EPA decisions to require the testing of chemicals under Section 4. [19/]

16/ 15 U.S.C. § 2604(a)(2).

17/ 15 U.S.C. § 2603(a).

18/ TSCA Section 4(c), 15 U.S.C. § 2603(c).

19/ See 40 C.F.R. § 716.1.

The applicable regulations for purposes of defining "processor''under Sections 4 and 8(d) are found at 40 C.F.R. Part 716. Part 716 applies to processors "for commercial purposes" which has a definition similar to that under TSCA Section 5 as set forth above. [20/] Thus, when shipyard operators sell ships containing "processed" paints, adhesives, etc., they may be subject to the reporting and testing requirements of Sections 4 and 8(d). However, it should be noted that the obligation to test under Section 4 only arises when and if requested by EPA. Also, under Section 8(d), health and safety studies must only be submitted if they have been performed; there is no affirmative duty to conduct such studies.

3. TSCA Section 6: Regulation of Hazardous Chemical Substances and Mixtures.

Under TSCA Section 6, if EPA determines that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture presents an unreasonable risk of injury to health and the environment, the Agency can promulgate a rule to prohibit or limit activities involving that substance or mixture. Through such rulemaking, the Agency may prohibit or restrict the amount of the substance manufactured, processed or distributed; prohibit or restrict its uses or concentrations; require labeling or warnings; require recordkeeping and testing; regulate methods of disposal; require product recalls or impose quality controls on the substance. [21/] To date, the substances regulated by EPA under Section 6 include polychlorinated biphenyls ("PCBS"), chlorofluoroalkanes, asbestos and hexavalent chromium-based water treatment chemicals. The shipyard

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20/ See also 40 C.F.R. $716.3.

21/ TSCA Section 6(a); 15 U.S.C. § 2605(a).

operators must comply with the applicable regulations for any of these substances which they handle. Currently shipyard operators are subject at least to the PCB regulations set forth at 40 C.F.R. Part 761 because many shipyards have electrical equipment containing PCBS either in use or stored at their facility.

4. **TSCA Section 8: Reporting and Retention of Information**

Section 8(a)

The TSCA Section 8(a) regulations specify the general reporting and recordkeeping procedures for manufacturers, importers and processors [22/] of certain chemical substances and mixtures specified in Subparts B and D of 40 C.F.R. Part 704. The primary regulations implementing Section 8(a) constitute the preliminary Assessment Information Rule found at 40 C.F.R. Part 712 and the Comprehensive Assessment Information Rule found at 40 C.F.R. Part 704.

Shipyard operators are exempt from the requirements of Section 8(a) for several reasons. First, the regulations generally exempt from the scope of Section 8(a) a person who, inter alia, "imports, processes, or proposes to import or process a substance . . . solely as an article."[23/] An 'article' is defined as:

> a manufactured item (1) which is formed to a specific shape or design during manufacture, (2) which has end use function(s) dependent in whole or in part upon its shape or design during end use, and (3) which has either no change of chemical composition during its end use or only those changes of

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22/ Section 8(f) of TSCA indicates that the term "processing" as used in Section 8 generally means processing "for a commercial purpose." 15 U.S.C. § 2607(f).

23/ 40 C.F.R. $ 704.5(a) (emphasis added).

> composition which have no commercial purpose separate from that of the article, and that result from a chemical reaction that occurs upon end use of other chemical substances, mixtures, or articles; except that fluids and particles are not considered articles regardless of shape or design.[24/]

Certainly a "ship" falls within this definition of "article." Because shipyard operators only "sell" chemical substances and mixtures (i.e. ,paints, adhesives, etc.) as part of the ships they build or repair, shipyard operators are exempt from the regulatory requirements of Section 8(a).

Second, the Preliminary Assessment Information Rule ("PAIR") does not apply to processors. The PAIR is an information-gathering rule promulgated by EPA under TSCA Section 8(a) and requires the reporting of production, use and exposure-related information on certain listed chemical substances. The regulations identify only certain "manufacturers" and "importers" as persons affected by the PAIR.[25/]

Third, the Comprehensive Assessment Information Rule ("C AIR"), designed to serve eventually as the primary Section 8(a) reporting program, specifically exempts processors that, inter alia, are merely "repackagers," as defined in Section 704.203, and "small processors" as defined in Section 704.203 (or who have previously submitted data).[26/] We are unaware of any shipyard operators that are "repackagers." Nonetheless, if a shipyard qualifies as a "small processor," it is automatically exempt from the CAIR. A small processor must meet one of two standards:

24/ 40 C.F.R. § 704.3.

25/ See 40 C.F.R. § 712.20.

26/ 40 C.F.R. § 704.210(a) and (b).

> (1) First Standard . A processor of a substance is small if its total annual sales, when combined with those of its parent company (if any), are less than $40 million. However, if the annual processing volume of a particular substance at any individual site owned or controlled by the processor is greater than 45, 400 kilograms (100,000 pounds), the processor shall not qualify as small for purposes of reporting on that substance at that site, unless the processor qualifies as small under standard (2) of this definition.
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> (2) Second Standard . A processor of a substance is small if its total annual sales, when combined with those of its parent company (if any), are less than $4 million, regardless of the quantity of substances processed by that processor. [27/]

The rule is ambiguous with regard to the application of the term "sales" in the context of ship building repair. Probably it includes revenue from all the work rather than merely the chemical processing activities.

More significantly, the June 1989 Question and Answer ("Q&A") Document published by the EPA pursuant to the CAIR appears more broadly to exempt processors from the scope of the Rule. The purpose of the various Q&A Documents that EPA has published pursuant to this rule is, inter alia, to clarify who must report information and what information must be reported. In the Q&A Document, the following question and answer are presented with respect to the definition of "processor":

> **Q31.** Company A is a paint contractor who paints industrial equipment on its customer's facilities using paint that contains a CAIR listed substance. Must Company A report as a processor under the CAIR'?
>
> **A31. No.** Company A is not distributing the equipment that it paints in commerce. Rather, Company A is selling its

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27/ 40 C.F.R. § 704.203.

> services, not the paint which contains a CAIR listed substance. Therefore, Company A is an end-user and is not required to report under the CAIR. [28/]

This example suggests that the performance of a "service" for a customer which incidentally includes the sale of a chemical substance or mixture is not "distribution in commerce" of these substances and, hence, does not qualify one as a "processor" for purposes of the CAIR. This differs only slightly from the example of the automobile finishing facility used under Section 4 (see pp. 5-6 above). There the automobiles left the processor's facility in a manner considered to be distribution in commerce.

Section 8(c)

Section 8(c) primarily requires manufacturers, processors and distributors of chemical substances and mixtures to keep and, if requested, submit to EPA records of significant adverse reactions to health or the environment caused by the substance or mixture. A processor is defined as follows:

> (b) Processor. (1) A person who processes chemical substances, who is not also a manufacturer of those chemical substances, is subject to this Part if (i) the person processes chemical substances to produce mixtures, or (ii) the person repackages chemical substances or mixtures. [29/]

Because this definition is so broad and includes processors of even "mixtures," shipyard operators are subject to the Section 8(c) recordkeeping requirements. However, the duty

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28/ CAIR, Q&A Document (U.S. EPA, June 1989), p.9.

29/ 40 C.F.R. $ 717.50)(1).

to keep records and submit data does not arise unless there is a **significant adverse reaction** to health or the environment caused by the chemical substances and mixtures.

Section 8(e)

Section 8(e) requires any person who manufactures, processes or distributes : in commerce a chemical substance or mixture immediately to submit to EPA any information indicating that the substance or mixture presents a substantial risk of injury to human health or the environment. EPA has not issued any regulations implementing Section 8(e). However, TSCA Section 8(f) indicates that the term "processing" as used in Section 8 generally means processing "for commercial purpose. " In addition, EPA has indicated that it will interpret the term "processor" as broadly as the statute will allow for purposes of imposing substantial risk reporting obligations under Section 8(e).[30/] Thus, it is clear that shipyard operators are subject to substantial risk reporting for the substances they handle when they conduct risk assessments. However, as with Section 8(d), there is no requirement to conduct such studies.

5. **Inspection and Enforcement Authority Under TSCA Sections 11 and 15**

EPA has broad inspection and enforcement authority under TSCA. Section 11 gives the Agency the authority to inspect any facility or premises where chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce. Section 15 provides that it is unlawful to: (a) fail or refuse to comply with any rule or order promulgated under Sections 4, 5, or 6; (b) use for commercial purposes any

30/ See EPA Statement of Interpretation and Enforcement Policy Concerning Section 8(e) of TSCA, 43 Fed. Reg. 11110 (March 16, 1978).

chemical substance or mixture that was manufactured, processed, or distributed in commerce in violation of Sections 5 or 6; (c) fail or refuse to establish or maintain records, submit reports, notices, or other information, or permit access to or copying of records; or (d) fail or refuse to permit entry or inspection as required by Section 11.[31/] The statute prescribes both civil (Section 16) and criminal (Section 17) penalties for violation of any of the provisions of Section 15.

III. **CONCLUSION**

The foregoing discussion indicates that shipyard operators probably are subject to the requirements of TSCA as "processors" for the mere mixing and application on ships owned by others of paints, formaldehyde glues, foam-in-place resins, etc. and, of course, for the sale of ships whose structures contain these substances. Because EPA has determined that these activities involve "distribution in commerce, " shipyard operators are subject to the following major provisions of TSCA: (1) testing of chemicals under Section 4; (2) significant new use reporting under Section 5; (3) PCB regulations under Section 6; (4) recordkeeping and reporting for certain chemicals under Section 8(a); (5) recording of significant adverse reactions under Section 8(c); (6) health and safety studies reporting under Section 8(d); (7) substantial risk of injury reporting under Section 8(e) and, of course; (8) inspection and enforcement under Sections 11 and 15.

Despite the general applicability of TSCA to shipyard operators, most of the obligations under these specific regulatory provisions do not arise immediately but rather

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31/ 15 U.S.C. $2614.

are contingent upon the existence or occurrence of some event. For example, significant new use reporting is only required if the substance being processed is listed in Subpart E of 40 C.F.R. Part 721 and the use is considered a "significant new use;" testing under Section 4 is only required when and if requested by EPA; recordkeeping and reporting are only required if the substance used is listed under Section 8(a); the submission of health and safety studies under Section 8(d) is only required when and if such studies are performed (i.e., there is no affirmative duty to perform them under TSCA); the recording of significant adverse reactions under Section 8(c) is dependent upon the occurrence of such adverse reactions; and the reporting of substantial risk of injury information under Section 8(e) is only required if information is obtained indicating that a risk exists (again, no affirmative duty to conduct a risk assessment). Consequently, shipyard operators may have only a few immediate obligations with respect to TSCA, such as compliance with the PCB regulations. However, it is important to note that shipyard operators do have potential non-PCB-related TSCA obligations, including TSCA inspections authority, and should be alert to events which could trigger those obligations in the future.

Please call us if you have any questions.